

ORIGINAL

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE APPLICATION OF)
ZAYO GROUP, LLC, 360NETWORKS (USA))
INC., ABOVE NET COMMUNICATIONS, INC.)
AND ONVOY, INC. FOR AN ORDER)
AUTHORIZING CERTAIN *PRO FORMA* INTRA-)
CORPORATE TRANSACTIONS)

**APPLICATION FOR
ORDER AUTHORIZING
PRO FORMA TRANSACTIONS**

Zayo Group, LLC ("Zayo"), 360networks (USA) inc. ("360networks"), AboveNet Communications, Inc. ("AboveNet," and together with Zayo and 360networks collectively, "Company") and Onvoy, Inc. ("Onvoy," and collectively with Company, the "Applicants") , by their undersigned counsel and pursuant to A.R.S. § 40-285 and applicable regulations, hereby request Arizona Corporation Commission ("Commission") approval, to the extent necessary, for Applicants to complete certain *pro forma* intra-company transactions that, with respect to Applicants' regulated businesses in Arizona, will result in (1) the assets and customers of 360networks and AboveNet moving to Zayo (the "Zayo *Pro Forma* Transactions") and (2) certain wholesale voice services and assets, currently owned by 360networks, moving from the Company to Onvoy (the "Onvoy *Pro Forma* Transaction") (together, the "*Pro Forma* Transactions"). As described in more detail below, the Zayo *Pro Forma* Transactions will be accomplished through (1) the roll-up of 360networks and AboveNet into Zayo through a series of *pro forma* mergers, with Zayo as the surviving entity, and/or (2) the *pro forma* assignment of the assets and customers of 360networks and AboveNet to Zayo followed by the series of *pro forma* mergers described in

1 (1).¹ The *Pro Forma* Transactions are part of a series of intra-company transactions that will
2 simplify the corporate structure of Zayo and align the portions of the business of 360networks and
3 AboveNet more closely with the business structure of Zayo and Onvoy. Subject to receipt of
4 applicable regulatory approvals, Applicants propose to complete the *pro forma* intra-company
5 transactions as soon as possible and no later than January 30, 2013.

6 Applicants also request that the Certificates, tariffs, and performance bonds of AboveNet
7 and 360networks be cancelled effective upon notification by Applicants that the *Pro Forma*
8 Transactions have been completed.

9 In support of this Application, Applicants provide the following information:

10 **I. INTRODUCTION**

11 Since the time that it completed a *pro forma* intra-company consolidation in 2011, Zayo
12 has acquired a number of additional existing communications businesses, including 360networks
13 and AboveNet. As a result of these acquisitions, the corporate structure of Zayo, has again
14 become overly complex, with numerous operating entities, many of whose services overlap.
15 Through the consolidation of those entities, Zayo will greatly simplify its corporate structure and
16 reduce the reporting and accounting burdens of Zayo (and the regulatory Commissions who
17 receive such reports) and provide operational efficiencies.

18 **II. DESCRIPTION OF THE PARTIES**

19 Zayo is a Delaware limited liability company with principal offices at 400 Centennial
20 Parkway, Suite 200, Louisville, Colorado 80027. 360networks is a Nevada corporation that is a
21 wholly owned indirect subsidiary of Zayo Group. AboveNet is a Delaware corporation that is a

22 ¹ American Fiber Systems, Inc. ("AFS") does not currently have any assets or customers in
23 Arizona and, therefore, is separately seeking to cancel its certificate of public convenience and necessity
24 ("AFS Certificate") granted in Decision No. 63936 effective immediately upon filing or as soon as the
Commission takes any necessary action to cancel such AFS Certificate.

1 wholly owned indirect subsidiary of Zayo Group. Zayo Group is a wholly-owned direct
2 subsidiary of Zayo Group Holdings, Inc. ("Holdings"), a Delaware corporation, which in turn is a
3 wholly owned direct subsidiary of Communications Infrastructure Investments, LLC ("CII"), a
4 Delaware limited liability company. CII has no majority owner.

5 In Arizona, Zayo is authorized to provide facilities-based local exchange services and
6 resold and facilities-based intraLATA and interLATA private line services pursuant to Decision
7 No. 72561. 360networks is authorized to provide local exchange switched access services and
8 interexchange telecommunications services pursuant to Decision Nos. 69240 and 62710,
9 respectively. AboveNet is authorized to provide facilities-based and resold non-switched private
10 line and high capacity fiber optic telecommunications services pursuant to Decision No. 62628.²
11 Applicants are also authorized by the Federal Communications Commission ("FCC") to provide
12 domestic and/or international telecommunications services. Except for the wholesale voice
13 services currently provided by 360networks that will move to Onvoy, the Company only provides
14 private line services (and similar non-voice services) and does not provide any other voice
15 services.

16 Additional information concerning the Company's legal, technical, managerial and
17 financial qualifications was submitted to the Commission in connection with various Applicants'
18 certification applications and various corporate and financial transactions and is therefore already
19 a matter of public record. Applicants request that the Commission take notice of these
20 descriptions of the Company's qualifications and incorporate them by reference herein. In support
21 of its financial qualifications, the Company's financial statements from its most recent SEC Form
22 10-Q is available at http://www.zayo.com/sites/default/files/Zayo_FY3Q2012_10-Q_0.PDF.

23 ² The authorization was originally granted in the name of Metromedia Fiber Network Fiber
24 Services, Inc., which subsequently changed its name to AboveNet.

1 Onvoy is a corporation organized under the laws of the State of Minnesota whose principal
2 address is 10300 6th Avenue North, Plymouth, Minnesota 55441. Onvoy is a wholly owned direct
3 subsidiary of Holdings. Onvoy has been providing telecommunications since 1988. In Arizona,
4 Onvoy has a pending application for a certificate to provide certain services in Docket No. T-
5 20852A-12-0116. Additional information concerning Onvoy's legal, technical, managerial and
6 financial qualifications was submitted to the Commission in connection its certification
7 applications and is therefore already a matter of public record. Applicants request that the
8 Commission take notice of these existing descriptions of Onvoy's qualifications and incorporate
9 them by reference herein.

10 **III. DESIGNATED CONTACTS**

11 Questions, correspondence or other communications concerning this Application should be
12 directed to Applicants' counsel of record:

13 For Applicants:

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19 with copies to:

20 Scott E. Beer, General Counsel
21 Jill Sandford, Associate General Counsel
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1 **IV. DESCRIPTION OF THE *PRO FORMA* TRANSACTIONS**

2 In order to simplify its corporate structure, Zayo is undertaking certain *pro forma* intra-
3 company transactions that will result in customers and assets moving from AboveNet and
4 360networks to Zayo.³ Depending on the timing of various state regulatory approvals, the Zayo
5 *Pro Forma* Transactions will be accomplished by (1) the roll-up of 360networks and AboveNet
6 into Zayo through a series of *pro forma* mergers, with Zayo as the surviving entity (i.e. its merging
7 subsidiaries will cease to exist as separate corporate entities);⁴ and/or (2) the *pro forma* assignment
8 of assets and customers of 360networks and/or AboveNet to Zayo, followed by the series of *pro*
9 *forma* mergers. Ultimately, Zayo will be the Company entity that provides of telecommunications
10 services throughout the United States. In addition to these Zayo *Pro Forma* Transactions, certain
11 wholesale assets and services currently held by 360networks will be moved to Zayo's affiliate,
12 Onvoy. The assets involved in the Onvoy *Pro Forma* Transaction include facilities used to
13 provide wholesale local exchange and long distance services as well as switched access services.
14 Diagrams illustrating the organizational structure of the Company and Onvoy before and after the
15 *Pro Forma* Transactions are provided in Exhibit A.

16 The proposed *Pro Forma* Transactions will not result in any changes to the services re-
17 ceived by customers, including rates, terms and conditions of service. Each customer's service

18
19 ³ Although the Applicants do not believe that the Commission's Slamming Rules were intended to
20 cover a transfer of the type of customer at issue here, to the extent required, the Applicants request a waiver
21 of the Commission's Slamming Rules.

22 ⁴ With respect to AboveNet, the roll-up will consist of the sequential mergers of (a)
23 AboveNet with and into its direct parent, AboveNet, Inc. ("ABN-Parent"), whereupon the separate
24 existence of AboveNet will cease and ABN-Parent will be the surviving entity and (b) ABN-Parent with
and into Zayo, whereupon the separate existence of ABN-Parent will cease and Zayo will be the surviving
entity. With respect to the 360networks, the roll-up will consist of the sequential mergers (a) of
360networks with and into 360networks holdings (USA) inc. ("360-Parent"), whereupon the separate
existence of 360networks will cease and 360-Parent will be the surviving entity and (b) of 360-Parent with
and into Zayo, whereupon the separate existence of 360-Parent will cease and Zayo will be surviving
entity.

1 will be assigned to Zayo and Onvoy pursuant to terms of that customer's service contract that
2 permit assignment to affiliates and/or pursuant to the customer's authorization. In addition, each
3 of the affected customers will receive notice of the *Pro Forma* Transactions that affect their
4 service. A sample of the notice that will be sent to customers that will become Zayo customers is
5 provided as Exhibit B and a sample of the notice that will be sent to customers of the Company
6 that will become Onvoy and/or Zayo customers is provided as Exhibit C.

7 **V. REQUEST TO CANCEL THE CERTIFICATES AND ASSOCIATED TARIFFS OF**
8 **360NETWORKS AND ABOVE NET**

9 Following the *Pro Forma* Transaction, 360networks and AboveNet will no longer provide
10 telecommunications services in Arizona and ultimately will cease to exist as corporate entities.
11 Therefore, Applicants request that, effective upon notification from Applicants that the *Pro Forma*
12 Transaction has been completed, the Commission cancel the Certificates of 360networks and
13 AboveNet.

14 **VI. PUBLIC INTEREST CONSIDERATIONS**

15 Applicants submit that the *pro forma* intra-company transactions described herein are in
16 the public interest. The *Zayo Pro Forma* Transactions will simplify the Company's existing
17 corporate structure and thereby reduce its reporting and accounting burdens and provide other
18 operational efficiencies. As a result of the efficiencies and focus, the Company will become a
19 stronger competitor to the ultimate benefit of consumers. The Onvoy *Pro Forma* Transaction will
20 also align certain wholesale assets and services with an entity that focuses on that business to the
21 benefit of the customers.

22 Furthermore, the *Pro Forma* Transactions will be virtually transparent to customers and
23 will not result in any change in their services. Since all affected customers are already familiar
24

1 with, and are receiving invoices including the "Zayo" brand, the Zayo *Pro Forma* Transactions
2 will not result in customer confusion. Moreover, the rates, terms and conditions of their services
3 will not change as a result of these purely intra-company transactions.


4 Finally, all of Zayo's subsidiaries, including Applicants, have the same corporate officers.
5 Therefore, there will be no change in the managerial qualifications of the telecommunications
6 provider serving the customers affected by the Zayo *Pro Forma* Transactions. Similarly, Onvoy's
7 officers and key personnel have the managerial qualification to provide telecommunications
8 services to customers affected by the Onvoy *Pro Forma* Transaction.

9 **VII. CONCLUSION**

10 For the foregoing reasons, Applicants submit that the public interest, convenience, and
11 necessity would be furthered by grant of this Application, authorizing Applicants to complete the
12 *Pro Forma* Transaction as described herein. Applicants also request that the Certificates and
13 tariffs of 360networks and AboveNet be cancelled effective upon notification by Applicants that
14 the *Pro Forma* Transaction was completed.

15 Respectfully submitted this 14th day of November, 2012

16
17 LEWIS and ROCA, LLP

18 By 

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Counsel for Applicants

1 Original and 13 copies of the foregoing
2 filed this 14th day of November, 2012 with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix, Arizona 85007

7 Copy of the foregoing hand-delivered
8 this 14th day of November, 2012 to:

9 Lyn Farmer, Esq.
10 Chief Administrative Law Judge
11 Hearing Division
12 Arizona Corporation Commission
13 1200 West Washington Street
14 Phoenix, Arizona 85007

15 Janice Alward, Esq.
16 Chief Counsel, Legal Division
17 Arizona Corporation Commission
18 1200 West Washington Street
19 Phoenix, Arizona 85007

20 Mr. Steven M. Olea
21 Director, Utilities Division
22 Arizona Corporation Commission
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24 Phoenix, Arizona 85007

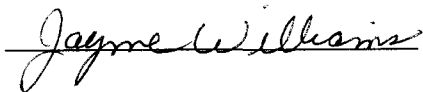
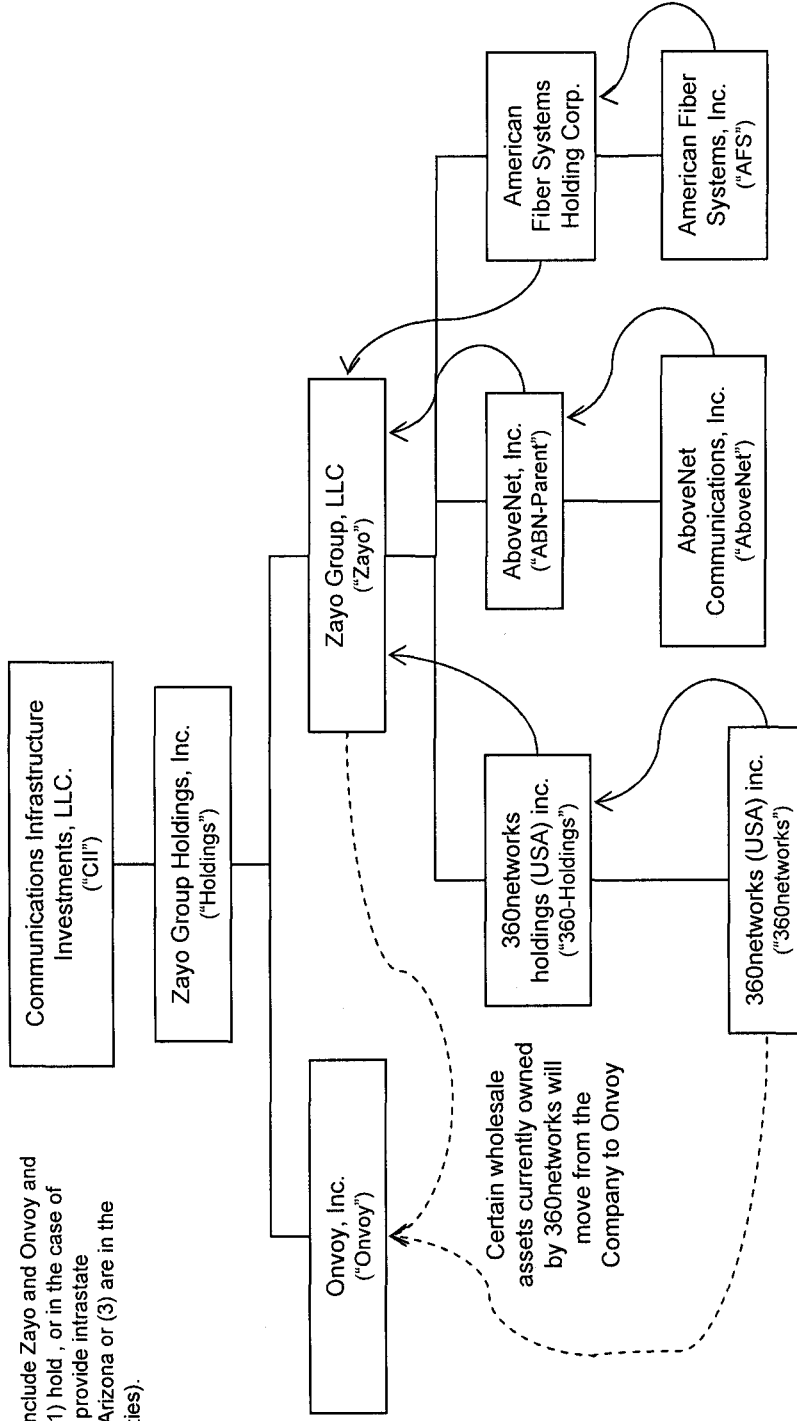


EXHIBIT A

Diagrams of the Pre- and Post-*Pro Forma* Intra-Company Transactions
Corporate Organization Structure of the Applicants

Corporate Organizational Structure of Zayo and Onvoy Before the *Pro Forma* Transactions



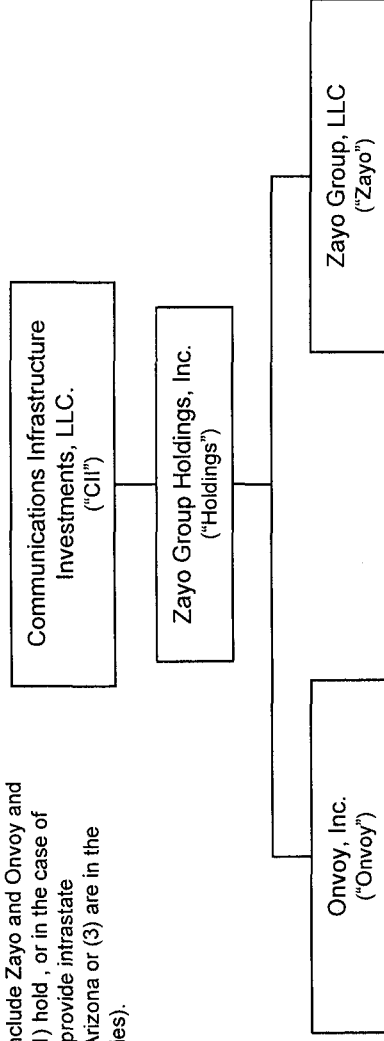
* The entities listed herein only include Zayo and Onvoy and those subsidiaries of Zayo that (1) hold, or in the case of Onvoy will hold, authorization to provide intrastate telecommunications services in Arizona or (3) are in the chain of ownership of those entities).

Unless otherwise indicated all ownership percentages are 100%.

Corporate Organizational Structure of Zayo and Onvoy

After the *Pro Forma* Transactions

* The entities listed herein only include Zayo and Onvoy and those subsidiaries of Zayo that (1) hold , or in the case of Onvoy will hold, authorization to provide intrastate telecommunications services in Arizona or (3) are in the chain of ownership of those entities).



Unless otherwise indicated all ownership percentages are 100%.

EXHIBIT B

Sample Customer Notice

The applicable affected customers will receive notice of the *Zayo Pro Forma* Transactions through a bill notation. The notice will be provided to customers in their bill issued at least 30 days prior to the *Zayo Pro Forma* Transactions. The text of the bill notation will be substantially similar to the following:

On or about [DATE], Zayo Group, LLC will undertake an internal corporate consolidation. Thus, the Zayo corporate entity that will provide your telecommunications services will be Zayo Group, LLC. Your services and the associated pricing and terms and conditions of service will not change as a result of this internal consolidation. There is no charge associated with this change. You will receive a bill from Zayo and we will continue to resolve any issues you may have with your account or service using the same customer service number: 1-866-236-2824.

We recognize that, subject to the terms of your contract, you always have a choice in providers and believe that this internal consolidation will enhance our ability to serve you. Zayo looks forward to continuing to provide you with the superior service you are accustomed to receiving and to the opportunity to provide you additional services.

EXHIBIT C

Sample Customer Notice

The applicable affected customers will receive notice of the Onvoy *Pro Forma* Transaction through a bill notation. The notice will be provided to customers in their bill issued at least 30 days prior to the Onvoy *Pro Forma* Transaction. The text of the bill notation will be substantially similar to the following:

On or about [DATE], 360networks, Zayo Group and Onvoy Voice Services will undertake certain internal changes resulting in Onvoy Voice Service being the entity that will provide your wholesale voice telecommunications services and Zayo Group being the entity that will provide your non-voice telecommunication services, if any. Your services and the associated pricing and terms and conditions of service will not change as a result of this internal change. There is no charge associated with this change. You will receive bills from Onvoy Voice Services for your wholesale voice telecommunications services and Zayo for your non-voice telecommunications services. Onvoy and Zayo will resolve any issues you may have with your account or service using the following customer service numbers: 1-800-933-1224 for Onvoy; 1-866-236-2824 for Zayo.

We recognize that, subject to the terms of your contract, you always have a choice in providers and believe that this internal change will enhance our ability to serve you. Onvoy Voice Services and Zayo look forward to continuing to provide you with the superior service you are accustomed to receiving and to the opportunity to provide you additional services.